



KAPLAN KIRSCH ROCKWELL

226997



May 7, 2010

Via hand delivery

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

MAY - 7 2010

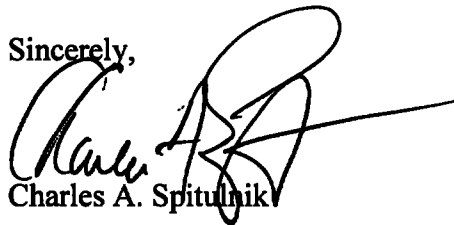
Part of
Public Record

**Re: Philadelphia Belt Line Railroad Company – Petition for Declaratory Order
Finance Docket No. 35345**

Dear Ms. Brown:

I am enclosing an original and ten copies of (a) the Motion for Leave to File a Reply to a Reply and (b) Reply of the Philadelphia Belt Line Railroad Company in the above referenced proceeding. Please date stamp the extra copy provided and return to our messenger. We are enclosing a fax copy of the Philadelphia Belt Line Railroad Company's Verification page and will provide an original as soon as we receive it. Please note that a CD is enclosed with these documents.

Sincerely,



Charles A. Spitulnik

Enclosure

cc: John G. Harkins, Jr.
Barbara Brigham Denys
Paul A. Cunningham
James M. Guinivan

Attorneys at Law
Denver • New York • Washington, DC

Kaplan Kirsch & Rockwell LLP
1001 Connecticut Ave., N.W.
Washington, DC 20036

tel: (202) 955-5600
fax: (202) 955-5616
www.kaplankirsch.com

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**



Finance Docket Number 35345

**PHILADELPHIA BELT LINE RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER**

**VERIFIED REPLY OF THE PHILADELPHIA BELT LINE RAILROAD COMPANY
TO REPLY OF HSP GAMING, L.P. AND SUGARHOUSE HSP GAMING, L.P. d/b/a/
THE SUGARHOUSE CASINO**

Dated: May 7, 2010

Communications with respect to this
document should be addressed to:

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Office of Proceedings**

MAY – 7 2010

**Part of
Public Record**

Charles A. Spitulnik
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Ave., N.W., Suite 800
Washington, DC 20036
(202) 955-5600

Attorneys for the Philadelphia Belt Line
Railroad Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket Number 35345

**PHILADELPHIA BELT LINE RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER**

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TO REPLY OF HSP GAMING, L.P. AND SUGARHOUSE HSP GAMING, L.P. d/b/a/
THE SUGARHOUSE CASINO**

The Philadelphia Belt Line Railroad Company, Inc. (“PBL”), the petitioner in this proceeding, hereby submits its Reply to the Reply of HSP Gaming, L.P., and SugarHouse HSP Gaming, L.P., d/b/a The SugarHouse Casino (“SugarHouse”) to the Verified Petition of the Philadelphia Belt Line Railroad Company for Declaratory Order, filed in this proceeding on February 3, 2010 (the “SugarHouse Reply”). PBL has this day filed a Motion for Leave to file a Reply to a Reply and is tendering this Reply in anticipation of a favorable ruling on that Motion.

In the SugarHouse Reply, SugarHouse omitted relevant facts that confirm that its own documents demonstrate the legitimacy of the rights PBL seeks to protect in this proceeding. Moreover, SugarHouse mischaracterizes the nature and scope of PBL’s rights and operations in the City of Philadelphia in general and along the riverfront in particular. In order to ensure that the Board has a complete and accurate record upon which to base its decision herein, and in anticipation of a favorable ruling on this Motion, PBL is tendering its Reply to the SugarHouse Reply along with this Motion.



In further support of its Petition for Declaratory Order, filed in this proceeding on January 14, 2010, and in the interest of ensuring that this Board has an accurate and complete record upon which to base its decision, PBL submits the following supplemental information:

1. SugarHouse's own documents confirm the existence of a right to operate trains on the Penn Street right-of-way that SugarHouse is obstructing with the construction of its casino. A survey of the casino project site prepared for HSP Gaming, LP, by Urban Engineers, Inc., with most recent revisions dated January 8, 2007, in response to comments from the City of Philadelphia's 3rd Survey District, clearly shows and denotes "[s]egments of railroad tracks (no longer in use)" throughout both the vacated and still-open portions of the Penn Street right-of-way. A copy of that survey is attached hereto as Attachment 1. In addition, Note 11 lists the following encumbrance as affecting the property: "Philadelphia Beltline Railroad right of way within the former bed of Penn Street (formerly Delaware Avenue) created by Ordinance of City Council approved December 26th, 1890, as amended by Ordinance of City Council approved July 1, 2004 (affects Premises A and C)". Contrary to SugarHouse's assertions, the City's land records clearly reflect that PBL's rights in the Penn Street right-of-way were not extinguished when a portion of Penn Street was abandoned in 2004.
2. SugarHouse attempts to trivialize PBL's interest in preservation of the tracks on Penn Street. Making an issue of the absence of tracks on Penn Street that were installed, maintained and owned by PBL ignores the basic structure of the rights PBL received upon its formation over 100 years ago. PBL did not have to build tracks there – it had the right to operate on the tracks of others in that corridor. Its right to use the tracks that were located in Penn Street remained an active right that had been acknowledged by the

ICC and that was not extinguished by Conrail's abandonment of its own right to use those tracks. When PBL was created, it was given a *unified* rail system. The two ends of its system were connected by track it had the right to use on Penn Street. Its tariffs, previously submitted to this Board, confirm that traffic moved between the two ends of its system. The removal of the Penn Street tracks removes PBL's ability to connect the two ends of its system, a connection that becomes more important to have available as traffic in the Philadelphia region increases. Projections of growth in traffic to and through the Port of Philadelphia as a result of changes in traffic patterns due to the widening of the Panama Canal and proposals to increase freight rail capacity along the Eastern Seaboard point to the need to move traffic along the Delaware River waterfront along the route that PBL has authority to operate. Because of the removal of this track by SugarHouse, PBL is prevented from conducting that operation. While the track may have required some repair and rehabilitation prior to its use, that work is far less costly than the process of constructing the entire new right-of-way that PBL will be required to build to fulfill its obligations if it receives a request to move traffic over this route.

3. PBL has made no secret in its discussions with SugarHouse, prior to the commencement of the litigation in the Court of Common Pleas in Philadelphia or of this proceeding, that it seeks compensation for surrendering its rights in Penn Street to offset the cost that it will have to incur to develop an alternative means of connecting the two ends of its system. PBL has two mandates in its charter documents – to move freight and to move passengers. Contrary to SugarHouse's characterization of PBL's actions as "efforts to delay the development of the SugarHouse Casino" (SugarHouse Reply at 7), PBL has, as SugarHouse acknowledges, engaged in negotiations with SugarHouse since 2007 to

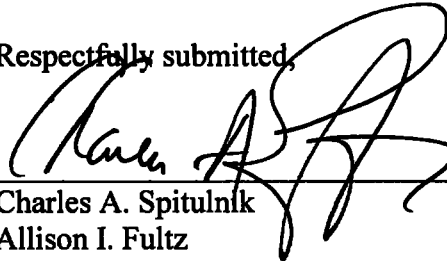
obtain compensation for PBL's relinquishment of rights that are reflected on SugarHouse's own documents. In fact, those discussions reflected SugarHouse's acknowledgement that an abandonment proceeding at the STB would be required. The discussions on this point centered on SugarHouse's requirement that PBL secure abandonment authority and on PBL's insistence that it and not SugarHouse would control that proceeding and selection of counsel to bring it. Prior to the commencement of action in action in state court, PBL and SugarHouse had concluded a firm handshake deal concerning the relinquishment of PBL's rights.

4. With the projection of increasing volumes of freight along the riverfront, and with the interest of the Delaware River Port Authority ("DRPA") and the Southeastern Pennsylvania Transportation Authority ("SEPTA") in developing a transit corridor along the riverfront using PBL's corridor¹, PBL must be in a position to preserve the ability to operate in the corridor to which it was granted rights initially and to provide the services for which it was created – rights and obligations that the ICC has recognized and that remain unextinguished by this Board. Accordingly, PBL must seek relief in order to defend its unabandoned common carrier operating rights.

¹ See, Map of PATCO's selected Locally Preferred Alternative, a copy of which is attached as Attachment 2.

WHEREFORE, in view of all of the foregoing and of the evidence and argument submitted by PBL in its Petition for Declaratory Order, filed in this proceeding on January 14, 2010, PBL respectfully requests this Board to issue a declaratory order confirming that PBL retains its right-of-way over the former Penn Street, and that, unless the STB grants any future application for abandonment pursuant to 49 U.S.C. § 10903, PBL retains that right-of-way.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

Charles A. Spitulnik
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Ave., N.W., Suite 800
Washington, DC 20036
(202) 955-5600

Attorneys for the Philadelphia Belt Line Railroad Company

Dated: May 7, 2010

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VERIFICATION AND CERTIFICATION

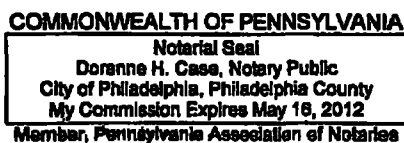
I, Charles E. Mather, III, President of the Philadelphia Belt Line, Inc., verify under penalty of perjury that the facts recited in the foregoing Reply of the Philadelphia Belt Line Railroad Company to Reply of HSP Gaming, L.P. And Sugarhouse HSP Gaming, L.P. d/b/a/ the Sugarhouse Casino are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Reply.

Charles E. Mather III
Charles E. Mather, III
President, Philadelphia Belt Line Railroad,
Inc.

Subscribed and sworn to
before me this 7th day of
May, 2010.

Doranne H. Case
Notary Public

My commission expires: 5-16-2012



Attachment 1

**SURVEY OF HSP GAMING LLP CASINO PROJECT SITE
PREPARED BY URBAN ENGINEERS, INC.**

**MAP IS
AVAILABLE
AT THE
BOARD**

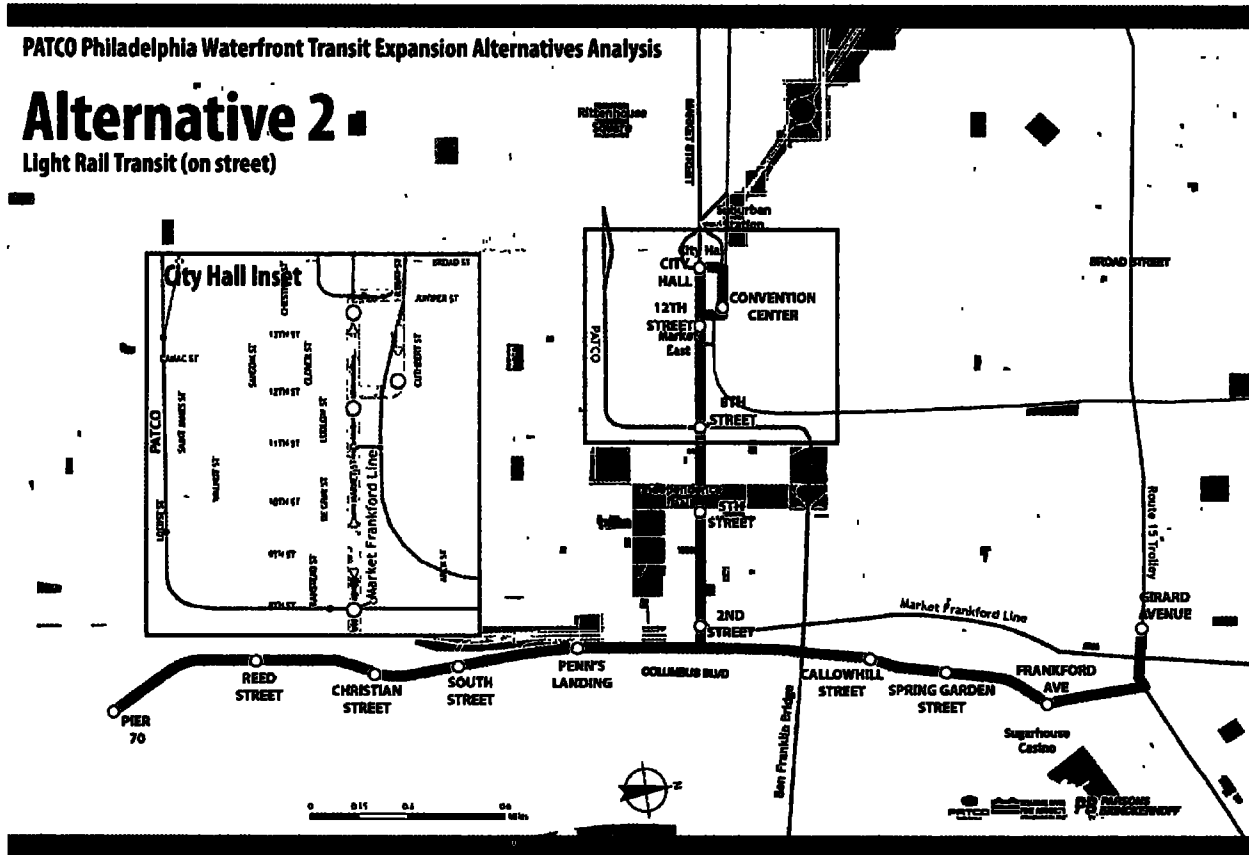
Attachment 2

PATCO Alternative 2 – Locally Preferred Alternative Light Rail along Waterfront

PATCO Philadelphia Waterfront Transit Expansion Alternatives Analysis

Alternative 2

Light Rail Transit (on street)



Certificate of Service

I hereby certify that I have this day caused to be served a copy of the foregoing Reply of the Philadelphia Belt Line Railroad Company to Reply of HSP Gaming, L.P. And Sugarhouse HSP Gaming, L.P. d/b/a/ the Sugarhouse Casino to be served by first class mail, postage prepaid upon the following:

John G. Harkins, Jr.
Barbara Brigham Denys
Robert L. Murken
HARKINS CUNNINGHAM LLP
2800 One Commerce Square
2005 Market Street
Philadelphia, PA 19103

Paul A. Cunningham
James M. Guinivan
HARKINS CUNNINGHAM LLP
1700 K Street, NW, Suite 400
Washington, DC 20006-3804

Dated this 7th day of May, 2010.



Charles A. Spitulnik